Order P26-14

XOLHEMET SOCIETY - WILMA'S TRANSITION SOCIETY

Amy O'Connor
Adjudicator

August 5, 2026

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Summary: An applicant requested her personal information from Xolhemet Society – Wilma's Transition House (organization) under the *Personal Information Protection Act* (PIPA). The organization provided some documents in response but withheld others under various sections of PIPA. At inquiry, the sole document remaining at issue was an investigation report that the organization refused to disclose under s. 23(3)(a) [solicitor-client privilege] of PIPA. The adjudicator found that s. 23(3)(a) authorized the organization to refuse access to the entire document at issue on the basis that litigation privilege applied.

Statutes Considered: *Personal Information Protection Act*, [SBC 2003], c 63, s. 23(3)(a).

INTRODUCTION

[1] An applicant made a request to her former employer, Xolhemet Society – Wilma's Transition House (organization), to provide her with access to her personal information under s. 23(1) of the *Personal Information Protection Act* (PIPA). Section 23(1) of PIPA gives individuals a right of access to their personal information under the control of an organization, subject to the exceptions set out in ss. 23(3) and 23(4).[1]

[2] The organization responded to the applicant's access request, and some information was withheld under ss. 23(3)(a) [solicitor-client privilege], 23(3)(b) [harm to competitive position], 23(4)(c) [personal information about another individual] and 23(4)(d) [identity of an individual who has provided personal information about another individual]. The applicant requested that the Office of the Information and Privacy Commissioner (OIPC) review the organization's

[1] From this point forward, all section references are to PIPA unless otherwise specified.

response. Mediation by the OIPC did not resolve all of the issues in dispute, and the matter proceeded to this inquiry. Both the applicant and the organization provided submissions.

ISSUE AND BURDEN OF PROOF

[3] The sole issue I must decide in this inquiry is whether the organization is permitted to withhold the disputed information under s. 23(3)(a) on the basis of solicitor-client privilege.

[4] Under s. 51(a), it is up to the organization to prove that the applicant has no right of access to all or part of her personal information.

DISCUSSION

Background

[5] The organization is a non-profit society operating a transition house that provides support services to individuals experiencing domestic violence.

[6] The applicant is a former employee of the organization. The organization terminated her employment and subsequently brought a civil claim against the applicant and a third party (Third Party) for wrongful conduct including misappropriation of funds.

Information at issue

[7] The information at issue is an investigation report comprising 103 pages (Investigation Report). The organization withholds the Investigation Report in its entirety.

Solicitor-client privilege – s. 23(3)(a)

[8] Section 23(3(a) states that a public body may refuse to disclose information that is protected by solicitor-client privilege. The term solicitor-client privilege encompasses both legal advice privilege and litigation privilege.[2] In this case, the organization is claiming both legal advice privilege and litigation privilege over the Investigation Report.

Sufficiency of evidence to adjudicate the privilege claim

[9] The organization provided the Investigation Report and an affidavit from one of its lawyers (Legal Counsel) in support of its position. After reviewing the

[2] *Guild Yule LLP (Re)*, 2024 BCIPC 13 [*Guild Yule*], para 11.

organization's initial submissions and evidence, I was not satisfied that it had provided a sufficient evidentiary basis to enable me to adjudicate its claim of privilege. As such, I wrote to the organization and provided it with an opportunity to submit additional information and evidence to support its claim.

[10] In response to my request, the organization made additional arguments and provided a second affidavit from its Legal Counsel. I also provided the applicant with an opportunity to reply to those submissions and evidence, and she provided a sur-reply. After reviewing the parties' additional submissions, I determined I had sufficient information to decide if privilege applies.

Legal advice privilege

[11] Legal advice privilege applies to confidential communications between a solicitor and client for the purposes of obtaining and giving legal advice, opinion or analysis.[3] The privilege has been recognized as a fundamental legal right, essential to the integrity of the legal system.[4]

[12] The test for legal advice privilege is well established. There must be: (1) a communication between a solicitor and client (or their agent); (2) that entails the seeking or giving of legal advice; and (3) that is intended by the parties to be confidential.[5]

[13] Regarding scope, legal advice privilege is not limited to the direct communication of advice between solicitor and client. The BC Court of Appeal has established that legal advice privilege extends to the "continuum of communications" related to the advice that would reveal or permit accurate inferences about the substance of the advice.[6] The privilege may also extend to communications with third parties, if the third party: (1) serves as a channel of communication between the client and solicitor; or (2) or performs a function integral to the solicitor-client relationship.[7]

Parties' arguments about legal advice privilege

[14] The organization says the Investigation Report was prepared by a third-party forensic accounting firm (Accounting Firm), retained by Legal Counsel on the organization's behalf, to perform a defined investigative function. The organization says the Accounting Firm was engaged to gather, analyze and synthesize complex financial information pursuant to Legal Counsel's instructions, for the purpose of enabling Legal Counsel to provide legal advice to

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[3] *Guild Yule, ibid,* para 19.
[4] *R v McClure*, 2001 SCC 14, para 17.
[5] *Solosky v The Queen*, [1980] 1 SCR 821, p 837.
[6] *British Columbia (Attorney General) v Lee*, 2017 BCCA 219, paras 32-33.
[7] *Greater Vancouver Water District v Bilfinger Berger AG*, 2015 BCSC 532 [*Bilfinger*], para 27.

the organization and to assess and prepare for anticipated litigation or related proceedings.

[15] The organization says the Investigation Report was created with the expectation that it would remain confidential and be used by Legal Counsel, and it was not prepared as a routine human resources document or for general administrative purposes. The organization submits that the Investigation Report is privileged in its entirety because the factual and analytical components are inextricably intertwined with the legal advice sought and obtained, and any severance would therefore reveal the substance of that advice.

[16] In sum, the organization submits the Investigation Report falls within the scope of legal advice privilege because:

- it was created for the purpose of enabling the organization to seek and obtain legal advice regarding workplace issues with potential legal consequences;
- the investigation process and resulting report were undertaken at the direction of, or for the purpose of, consultation with Legal Counsel; and
- the Investigation Report forms part of the confidential continuum of information exchanged between the organization and Legal Counsel in seeking and receiving legal advice.

[17] In response, the applicant submits that the Investigation Report is not privileged because it is neither a communication between solicitor and client nor a communication involving the seeking or giving of legal advice, and it was not intended to be confidential. The applicant submits that confidentiality cannot be maintained over the Investigation Report because:

- it was cited in the letter terminating the applicant (Termination Letter) as grounds to terminate the applicant with cause;
- it contains very serious allegations; and
- the applicant participated in the investigation.

[18] The applicant says that the organization's failure to disclose the Investigation Report has prejudiced the applicant and will continue to do so.

[19] In reply, the organization says the applicant incorrectly characterizes the Accounting Firm's role within the solicitor-client relationship. It says the Accounting Firm was not simply gathering and forwarding information, rather, its specialized expertise was required to interpret and translate complex financial data so that Legal Counsel could understand that data and advise the organization accordingly. It says that, without the Accounting Firm's forensic

work, Legal Counsel could not have understood the financial landscape, assessed the organization's legal exposure or advised on termination, civil recovery, regulatory obligations or related proceedings. With respect to confidentiality, the organization says the applicant has conflated the disclosure of factual conclusions with the disclosure of the Investigation Report itself. It says that the Termination Letter merely communicated an outcome, and the applicant's participation in one interview does not strip privilege from the entire Investigation Report.

Analysis and findings – legal advice privilege

[20] For the reasons that follow, I find that legal advice privilege does not apply to the Investigation Report.

[21] Based on the evidence provided by the organization, along with the Investigation Report itself, I am satisfied that a solicitor-client relationship was established between the organization and Legal Counsel regarding matters involving the applicant. I am also satisfied that Legal Counsel engaged the Accounting Firm on behalf of the organization to conduct forensic accounting and investigation services for the purpose of assisting Legal Counsel in providing legal advice to the organization.

[22] As the Investigation Report was produced by the Accounting Firm, and not the organization or Legal Counsel, it is a third-party communication rather than a solicitor-client communication. As a result, the Investigation Report does not meet the first part of the test for legal advice privilege. As noted above, however, solicitor-client privilege may extend to such third-party communications if the third party: (1) serves as a channel of communication between the client and solicitor; or (2) performs a function integral to the solicitor-client relationship.[8]

<u>Did the Accounting Firm serve as a channel of communication?</u>

[23] A third party serves as a channel of communication if it acts as an "agent of transmission" carrying information between the solicitor and client, or if its expertise is required to interpret information provided by the client so that the solicitor can understand it.[9]

[24] The organization submits that the Accounting Firm served as a channel of communication because it acted as both an agent of transmission and an expert interpreter of information that was beyond the ordinary understanding of the organization or Legal Counsel without specialized assistance.

[8] *Bilfinger, ibid*, para 27.
[9] *Ibid*.

[25] While not addressed by either party, prior OIPC orders have held that accounting firms in similar circumstances are not an agent of transmission or mere conduit, but rather a source of expert information. In Order F21-61, for example, an adjudicator held that an accounting firm was hired by a public body "to provide expert forensic investigation analysis to the [public body] as a consulting expert or potential expert witness."[10] The adjudicator provided as follows:

> [30] Given KPMG's role, I am not persuaded that it was acting as a channel of communication between the City and its lawyers. In my view, providing expert forensic investigation analysis is not the same as simply carrying or translating information between the City and its lawyers. I find that KPMG was a source of expert information, not a mere conduit of information. I accept that KPMG's analysis assisted the City's lawyers in providing legal advice to the City, but I am not persuaded that the City and its lawyers could not communicate without KPMG.

[26] Here, similarly, I find that the Accounting Firm's provision of forensic accounting and investigation services went beyond merely serving as a channel of communication.[11] Though I accept that the Accounting Firm's services and the resulting Investigation Report were useful to Legal Counsel in providing legal advice to the organization, there is no evidence before me to establish that Legal Counsel and the organization would not have been able to communicate otherwise.

[27] Further, the organization's evidence is that the Termination Letter was sent, and a Notice of Civil Claim filed against the applicant (NoCC), before the Investigation Report was delivered to Legal Counsel. It is not clear to me, and the organization does not explain, how this could happen if the Accounting Firm was serving as a necessary channel of communication between the organization and Legal Counsel.

[28] For these reasons, I find the Accounting Firm did not serve as a channel of communication for the organization and Legal Counsel.

<u>Did the Accounting Firm perform a function integral to the relationship?</u>

[29] Communications will not be protected merely because they assist a solicitor in formulating legal advice to their client.[12] The jurisprudence

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[10] 2021 BCIPC 70, para 29.
[11] I note that, while the third party in Order F21-61 was engaged by the public body directly rather than through its lawyers, this does not, in my view, impact the nature of the relationship between the parties for the purposes of this analysis.
[12] *Bilfinger*, *supra* note 7*,* paras 26-27.

establishes that a third party is performing a function integral to the solicitor-client relationship if:

- the third party is authorized by the client to direct the lawyer to act, or to seek legal advice from the lawyer on behalf of the client, or
- the third party is so intimately involved in the factual circumstances and the client's affairs that they effectively stand in the place of the client.[13]

[30] The organization argues that, in contrast to cases where the involvement of a third-party investigator has defeated solicitor-client privilege, the Accounting Firm performed a function integral to the solicitor-client relationship rather than merely gathered information incidental to legal advice.[14]

[31] The evidence before me establishes that the Accounting Firm's work was performed pursuant to Legal Counsel's instructions, under Legal Counsel's supervision and for the purpose of enabling the provision of legal advice. There is no evidence to suggest that the Accounting Firm was authorized by the organization to direct Legal Counsel to act or to seek legal advice from Legal Counsel on behalf of the organization. There is also no evidence to establish that the Accounting Firm was so intimately involved in the factual circumstances and the organization's affairs that they effectively stood in the place of the organization.

[32] Conversely, several court decisions and OIPC orders have previously found that communications and reports from experts providing expert analysis and assistance were not protected by legal advice privilege, because the experts were incidental and not integral to the solicitor-client relationship.[15]

[33] I am not persuaded that the Accounting Firm's function here, of providing forensic accounting and investigation services, was materially different than the functions of the experts in Order F21-61 or in the other, similar cases cited therein. In my view, the organization's evidence and arguments only establish that the Accounting Firm's expertise and preparation of the Investigation Report were useful to the formulation of advice, which does not meet the threshold of being integral to the solicitor-client relationship itself. Moreover, the organization has not clearly or persuasively explained why Legal Counsel was unable to render effective legal advice about the organization's position and options vis-à-vis the applicant, including conditional advice pending the outcome of financial analysis, before the Investigation Report was complete.

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[13] *Ibid*.
[14] The organization cites *Lewis v WestJet Airlines Ltd*, 2025 BCSC 1565, para 40.
[15] See Order F21-61, *supra* note 10, paras 33-34, and the cases cited therein.

[34] As a result, I find the Accounting Firm did not perform a function integral to the relationship between the organization and Legal Counsel. In my view, this is further supported by the timeline of events, namely that the Termination Letter was sent and the NoCC filed prior to Legal Counsel's receipt of the Investigation Report.

[35] In conclusion, I find that legal advice privilege does not extend to the Investigation Report as a third-party communication. I will now turn to litigation privilege.

Litigation privilege

[36] The organization asserts that litigation privilege also applies to the Investigation Report. The purpose of litigation privilege is to ensure the efficacy of the adversarial process, recognizing that to achieve this purpose, parties must be left to prepare their contending positions in private without adversarial interference or fear of premature disclosure.[16] The test for determining whether litigation privilege applies, commonly known as the "dominant purpose" test, entails two questions. If both questions are answered in the affirmative, then litigation privilege applies:

1) Was litigation in reasonable prospect at the time the document in dispute was created?
2) If so, was the dominant purpose of the document's creation for use in litigation?[17]

[37] Litigation need not be inevitable or imminent for litigation privilege to apply. It is sufficient that, viewed objectively, a reasonable person in possession of the relevant facts would conclude that litigation or adversarial proceedings were a realistic prospect and unlikely to be avoided without legal intervention.[18]

Parties' arguments about litigation privilege

[38] The organization submits that, at the time the Investigation Report was commissioned and prepared, litigation was a near certainty. Legal Counsel attests that, in her view, litigation was a near certainty when the Accounting Firm was engaged due to the scale of the suspected misappropriation, the seniority and fiduciary position of the applicant, the organization's need to pursue civil recovery and the reasonable anticipation that the applicant and the Third Party would assert wrongful dismissal claims if terminated. The organization says that the subsequent litigation is confirmation of the scenarios initially anticipated by Legal Counsel.

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[16] *Raj v Khosravi*, 2015 BCCA 49 [*Khosravi*], para 7.
[17] *Khosravi*, *ibid*, paras 8-20.
[18] *Beer v Nickerson*, 2010 BCSC 718, para 17.

[39] In relation to the dominant purpose of the Investigation Report, the organization submits that the Accounting Firm was retained by Legal Counsel exclusively for the purpose of conducting a forensic accounting investigation to enable Legal Counsel to advise the organization on its legal position and to assess and prepare for the anticipated litigation.

[40] The organization acknowledges that its Board of Directors (Board) was informed of the Accounting Firm's findings for the purpose of deciding whether to terminate the employment of the Applicant and the Third Party. It argues, however, that this was an employment-related use of the findings which was incidental to, and did not supplant, the dominant litigation purpose for which the Investigation Report was commissioned and prepared.

[41] The applicant argues that the dominant purpose of the Investigation Report was to gather, analyze and synthesize complex financial information. She says that the fact that Legal Counsel retained the Accounting Firm to author the Investigation Report is only one of several considerations when assessing if it is privileged and can be withheld pursuant to s. 23(3)(a).

[42] The applicant submits she was suspended from her employment due to an alleged breach of confidentiality, the source of which was another employee. She says the organization failed to provide particulars of the alleged breach before her suspension, and the investigation was procedurally flawed. The applicant also says, given the stated reason for the suspension and the lack of particulars provided by the organization, it was premature in the circumstances for the organization to conclude that litigation was a certainty on the date the Accounting Firm was retained.

[43] In addition, the applicant submits that certain language in the Engagement Letter is evidence that litigation was not contemplated or that Legal Counsel and the organization had predetermined wrongdoing. She says a finding that litigation privilege began when the investigation commenced would expand the meaning of s. 23(3)(a).[19] Finally, the applicant submits that litigation privilege cannot apply because the Accounting Firm was retained to investigate allegations, and an adversarial process requiring a zone of privacy did not yet exist.[20]

Analysis and findings – litigation privilege

[44] For the reasons that follow, I find that litigation privilege applies to the Investigation Report.

[19] I note that the applicant, who is represented by legal counsel, cites two OIPC orders in support of this proposition; however, neither order considers litigation privilege.
[20] The applicant again cites two OIPC orders which, in my view, are not relevant to her argument.

[45] The first question is whether litigation was in reasonable prospect when the Investigation Report was created. Litigation is in “reasonable prospect” when a reasonable person, fully informed of all relevant facts and circumstances, would conclude it is unlikely that the relevant dispute will be resolved without litigation.[21] Litigation may be in reasonable prospect “at any point along the continuum between the information-gathering and litigation stages of an inquiry.”[22] To satisfy this part of the test, the prospect of litigation need not be a certainty, but it must be more than mere speculation.[23] This sets a “low” threshold, which the courts have not considered particularly difficult to meet.[24]

[46] In this case, Legal Counsel attests to her view that litigation was a near certainty at the time the Accounting Firm was retained, and she explains the reasons for her assessment. Her sworn evidence is that she shared this view with the Board at that time. Further, Legal Counsel appends the letter of engagement with the Accounting Firm (Engagement Letter) to her second affidavit. The Engagement Letter and the Investigation Report itself both explicitly contemplate litigation and, in my view, corroborate Legal Counsel’s evidence. I am not persuaded that the language flagged by the applicant, in relation to notifying the Accounting Firm of any court or regulatory body request regarding their services or deliverables, contradicts this evidence.

[47] In sum, I accept Legal Counsel’s evidence and am satisfied that litigation was in reasonable prospect when the Investigation Report was commissioned. I find that the first part of the test for litigation privilege is clearly met.

[48] The next question is whether the dominant purpose of producing the Investigation Report was to obtain legal advice or to conduct or aid in the conduct of the litigation. This requires a factual determination, based on all of the circumstances and the context in which the document was produced, to determine “whether, and if so when, the focus of the investigation/inquiry shifted to litigation.”[25] Litigation privilege may apply to a document created for more than one purpose but only if the dominant purpose was litigation.[26]

[49] In this case, Legal Counsel retained the Accounting Firm, and her evidence is that the exclusive purpose was for the Accounting Firm to conduct a forensic accounting investigation in order to enable Legal Counsel to advise the organization on its legal position and to prepare for anticipated litigation. Further, Legal Counsel attests that the Accounting Firm was instructed at the outset of their engagement that the Investigation Report was being prepared to assist her

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[21] *Khosravi*, *supra* note 16, paras 10-11.
[22] *Khosravi*, *ibid,* para 50.
[23] *Khosravi*, *ibid,* para 10.
[24] *Ibid.*
[25] *Khosravi*, *ibid*, para 17.
[26] *Khosravi*, *ibid*, paras 16-17.

in advising the organization and preparing for anticipated litigation. Both the Engagement Letter and the Investigation Report reflect this purpose and these instructions, as does the timeline of events. I am satisfied, based on the evidence before me, that the dominant purpose of the Investigation Report was to prepare for litigation.

[50] Litigation privilege expires when the litigation that gave rise to it, as well as all related litigation, is at an end.[27] Here, the organization's evidence is that the litigation is ongoing, and I am satisfied that the privilege has not expired.

[51] Lastly, I recognize that the applicant takes issue with the investigation and surrounding circumstances. In my view, however, the issues raised by the applicant do not impact my findings that litigation was in reasonable prospect at the relevant time and the dominant purpose for the Investigation Report's creation was to prepare for litigation.

[52] In conclusion, I find that litigation privilege applies to the Investigation Report.

Waiver

[53] Solicitor-client privilege belongs to the client, and it may only be waived by the client.[28] Waiver of privilege is ordinarily established where it is shown that the privilege holder knows of the existence of the privilege and voluntarily shows an intention to waive that privilege.[29] Once privilege is established, the party seeking to displace it has the onus of showing it has been waived.[30] Waiver may also occur in the absence of an intention to waive, where fairness and consistency so require.[31]

Parties' arguments about waiver

[54] The applicant submits that the organization waived its privilege by citing the Investigation Report in the Termination Letter and in the NoCC. Specifically, the applicant argues that: (1) the Termination Letter and the NoCC refer to the same amount of funds allegedly misappropriated by the applicant (Alleged Amount); (2) the Termination Letter provides that the authors of the Investigation Report were retained to investigate allegations of misappropriation; and (3) the organization relied on information contained in the Investigation Report to support allegations made in the NoCC.

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[27] Order F21-61, *supra* note 10, para 42.
[28] *S & K Processors Ltd v Campbell Avenue Herring Producers Ltd* (1983), 1983 CanLII 407 (BCSC) [*S & K*], para 6.
[29] *S & K*, *ibid*, para 6.
[30] *Le Soleil Hotel & Suites Ltd v Le Soleil Management Inc*, 2007 BCSC 1420, para 22.
[31] *S & K, supra* note 28, para 6.

[55] In support of this position, the applicant cites a court decision that says "[w]here a litigant relies on legal advice as an element of their claim or defence, the privilege which would otherwise attach to that advice is lost."[32] The applicant also submits that the organization waived privilege over the Investigation Report because it voluntarily disclosed and relied upon portions of it in an insurance dispute involving the Third Party. The applicant appends a redacted copy of the Investigation Report in support of her arguments.

[56] In response, the organization argues that privilege has not been waived. With respect to the Termination Letter and the NoCC, the organization says:

- it has not relied on legal advice as an element of its claim against the applicant;
- factual findings were plead in the NoCC;
- the Termination Letter communicated a factual conclusion;
- neither the Termination Letter nor the NoCC puts the organization's understanding of the law, or its reliance on legal advice, in issue; and
- pleading facts is not the same as pleading reliance on legal advice.

[57] As for the disclosure to a third-party, the organization says:

- a heavily redacted three-page extract of the Investigation Report was provided in the matter involving the Third Party;
- the limited, controlled disclosure of factual conclusions for a specific purpose does not constitute a general waiver of privilege;
- there is no evidence that disclosure was voluntary rather than required; and
- regardless, the partial disclosure does not create a misleading picture that fairness requires be corrected by full disclosure.

Analysis and findings – waiver

[58] For the reasons that follow, I find the organization did not waive privilege over the Investigation Report.

<u>Termination Letter and NoCC</u>

[59] The parties do not dispute that: (1) the Termination Letter states that the organization retained the Accounting Firm to conduct an investigation; and (2) the Termination Letter and the NoCC refer to the Alleged Amount.

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[32] *Homan v Nemanishen*, 2024 BCSC 735, para 14.

[60] Although the organization confirmed in the Termination Letter that an investigation had taken place, I find this was already known to the applicant since she had participated in the investigation. Similarly, I find the organization cited the Alleged Amount as a factual finding of the investigation. While not raised by either party, I note that analogous circumstances were considered by the Ontario Superior Court of Justice in *Milsom v Toronto Community Housing Corporation*:[33]

> The plaintiff also argues that the defendants waived privilege when they disclosed the results of the investigation to the plaintiff in her termination letter and relied upon them in terminating her employment. The termination letter states in part: "The Board has since reviewed the results of the investigation and concluded that…" At discovery the plaintiff is entitled to ask what results from the investigation the board relied upon in terminating her and is entitled to ask about the underlying facts, but <u>the defendants' reference to the investigation in the termination letter does not waive privilege over the entire investigation file</u>. The letter says that <u>the board relied upon the results of the investigation, not the legal advice provided</u> by Bennett Jones based on their findings. [*emphasis added*]

[61] While this decision is not binding upon me, I find the reasoning persuasive and applicable to the facts in this matter. Consequently, I am not persuaded that the organization intended to waive privilege over the Investigation Report when it disclosed the results of the investigation, including the Alleged Amount, in the NoCC or the Termination Letter.

[62] Additionally, I found above that the Investigation Report is a third-party communication rather than a solicitor-client communication and, consequently, does not contain legal advice. I therefore find that the organization did not rely on legal advice contained in the Investigation Report as an element of its claim.

[63] In conclusion, I find the organization did not waive privilege over the Investigation Report when it confirmed an investigation took place in the Termination Letter or when it cited the Alleged Amount in the Termination Letter and the NoCC.

<u>Three-Page Excerpt</u>

[64] The parties do not dispute that the organization provided a redacted three-page excerpt of the Investigation Report to another, unnamed party. The applicant submits this disclosure was voluntary, while the organization suggests it was required by the employment insurance process.

[65] While further explanation or evidence from the organization would have been helpful, I find that mandatory disclosure is reasonable and logical in the

[33] 2021 ONSC 7078, para 59.

circumstances, as well as supported by legislation.[34] Although the applicant asserts the disclosure was voluntary, there is no evidence before me to substantiate that claim. I therefore find the applicant has not met her onus to demonstrate that privilege was waived.

[66] In conclusion, I find there is insufficient evidence to establish that the organization voluntarily intended to waive privilege over the Investigation Report when it disclosed a redacted three-page excerpt.

[67] In relation to fairness and consistency, I have reviewed both documents and find that the redacted three-page extract accurately states the Investigation Report's conclusions and does not create a misleading picture. As such, I am not satisfied that fairness or consistency necessitates disclosure of any additional information from the Investigation Report.

CONCLUSION

[68] For the reasons given above, I find that the organization has established that the information at issue is subject to litigation privilege. The organization is authorized to refuse to disclose this information under s. 23(3)(a) of PIPA.

August 5, 2026

ORIGINAL SIGNED BY

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Amy O'Connor, Adjudicator

OIPC File No.: P24-97331

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[34] *Employment Insurance Act*, SC 1996, c 23, ss. 30 & 126(14).